

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Conditions Proposed By SBC Communications Inc.
and Ameritech Corporation For Their Pending
Application To Transfer Control

CC Docket 98-141

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To the Commission:

**OPENING COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

The American Public Power Association (APPA) appreciates this opportunity to comment on SBC's and Ameritech's proposed conditions to the Commission's approval of their application to transfer licenses and authorizations. APPA is the national service organization representing the interests of more than 2,000 municipal and other state and locally owned electric utilities located in all states other than Hawaii. Approximately one of every seven Americans receives electricity from a public power utility operated by a municipality, a county, a state, a public utility district, an irrigation district, or a similar entity. *Seventy-five percent of public power's 2000 utilities serve communities with populations of less than 10,000 people.*

While the conditions that SBC/Ameritech propose may contribute to increased competition in some of the Nation's major population centers, they will do little to foster competition and accelerate the deployment of advanced telecommunications services in the rural areas. Public power utilities are providing or facilitating the provision of advanced telecommunications services in many rural areas and in the absence of barriers to entry, could do so in many others. But SBC is aggressively promoting anti-competitive state measures to thwart them from doing so. APPA, therefore, proposes that the Commission approve the merger only on the additional pro-competitive conditions discussed below.

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INTEREST OF APPA

Over the last century, hundreds of communities that were not large or profitable enough to attract private power companies banded together to create their own electric utilities, recognizing that electrification was critical to their economic development and survival. Public power utilities also emerged in several large cities, in which residents believed that competition and consumer choice was necessary to lower prices and raise the quality of service. These cities included Los Angeles, Seattle, Cleveland, Nashville, Jacksonville, San Antonio and Austin.

Today, the patterns that marked the evolution of the electric power industry are repeating themselves in the telecommunications industry. As private telecommunications providers focus on large, lucrative markets, many smaller communities are at risk of falling behind in obtaining the full benefits that access to advanced telecommunications services can bring in the Information Age. These benefits include the ability to attract new and retain existing businesses, the ability to provide information, data, images and learning techniques to schools, classrooms and libraries, the ability to improve the quality and reduce the costs of health care, and the ability to achieve a high quality of life. Many of the communities served by members of APPA have concluded that the only way they will obtain these services in a timely manner at cost effective rates is to provide these services themselves.

APPA has members in every state in the geographic region that SBC/Ameritech have proposed to serve through their merger. These public power utilities may be in the best position to offer immediate access to advanced telecommunications services to their more rural communities. In recent years, many of these public power systems—like their private counterparts, the investor owned electric utilities--have upgraded their telecommunications infrastructure to support their core business of managing the flow of electricity and the metering and billing of electric service. Many more will do so in the next few years. The newly installed telecommunications infrastructure can readily support the provision of video, voice, data and other advanced telecommunications services, either by the

public power systems themselves or by third-party joint venturers or contractual providers of such services. By optimizing the existing and planned telecommunications infrastructure, public power systems can accelerate the pace of deployment of our national information infrastructure, facilitate local competition, advance universal service, and minimize wasteful, costly and duplicative burdens on streets, poles, ducts, conduits and rights of way.

Unfortunately, SBC has worked vigorously to prevent public power utilities from providing telecommunications services, even in rural areas where SBC has no present or foreseeable intention to provide such services itself. SBC has devoted enormous resources to state legislative campaigns in an effort to eliminate competition from public power utilities and has already been successful in having state legislative barriers to entry language enacted in Texas, Missouri and Arkansas. If the Commission approves the merger without appropriate safeguards, SBC will likely continue these efforts. These anticompetitive activities are clearly designed to undermine the goals of the Telecommunications Act. With these comments, APPA urges the Commission to prevent SBC/Ameritech from exercising the even greater market and political power that they would have if the merger were approved, in furtherance of anti-competitive activities in their existing and new service territories. APPA also urges the Commission to condition any merger on SBC/Ameritech taking effective action to undo the damage that it has already accomplished.

DISCUSSION

On July 24, 1998, SBC/Ameritech submitted to the Commission their "Description of the Transaction, Public Interest Showing and Related Demonstrations," which included numerous affidavits and other attachments. These documents detailed SBC/Ameritech's plans to expand their services in international markets as well as in 30 major cities outside their current service areas. SBC/Ameritech said nothing about offering advanced telecommunications services any time soon in either

in-region or out-of-region rural areas in the United States. Indeed, they used the term “rural” only once – in describing a program in South Africa.

Following months of study, the Commission’s staff raised a number of significant concerns about the claimed competitive and consumer benefits of the proposed combination. On April 1, 1999, Chairman Kennard wrote a letter asking SBC/Ameritech to address several of these concerns, including the following:

How can the Commission be assured that the merger would promote the objective of the Telecommunications Act of 1996 to encourage competition in all telecommunications markets?

How can the Commission be assured that the public will promptly receive the claimed benefits from the proposed “national/local strategy” in view of section 271 of the Act?

...

How can the Commission be assured that the proposed combination will serve the Communications Act’s public interest mandate by improving overall consumer welfare?

Following receipt of Chairman Kennard’s letter, SBC/Ameritech developed a list of 26 proposed conditions that they suggest should satisfy Chairman Kennard’s and the staff’s concerns. Condition number 20 addresses deployment of advanced telecommunications services in rural areas:

20. SBC/Ameritech shall take the following steps to ensure that its deployment of xDSL services in the SBC/Ameritech States is not discriminatory:
 - a. SBC/Ameritech shall reasonably classify all SBC/Ameritech wire centers as either urban or rural wire centers for purposes of this Section.
 - ...
 - c. SBC/Ameritech shall identify the 10 percent of rural wire centers in each SBC/Ameritech State that have the highest proportion of low-income subscribers, as estimated by using the latest available census data (“Low Income Rural Pool”). After SBC/Ameritech deploys xDSL in at least 20 rural wire centers in a particular state, at least 10 percent of the rural wire centers in which SBC/Ameritech deploys xDSL in that State shall be wire centers from the Low Income Rural Pool.

On its face, this proposed condition does not commit SBC/Ameritech to extending xDSL technology to rural areas according to any particular timetable. Even when SBC/Ameritech do begin to deploy xDSL in rural areas, their proposal would only obligate them to serve two (2) of the lowest income, and possibly smallest, rural areas in a state. Furthermore, xDSL services are insufficient to support the applications necessary for economic development, equal educational opportunity and modern health care. The SBC/Ameritech proposal therefore does not yield affirmative answers to any of the concerns raised in Chairman Kennard's letter.

The shortcomings of SBC/Ameritech's proposed conditions with respect to rural areas are exacerbated by SBC's promotion of state barriers to entry by public power utilities. SBC has enormous influence in state legislatures.¹ As indicated, it has already used its power to obtain barriers to entry by public power utilities in its present service areas, including Texas,² Missouri³ and Arkansas.⁴ SBC will likely continue to seek anti-competitive measures elsewhere if left unchecked.

It is one thing for SBC/Ameritech to ignore the interests of rural communities while pursuing more lucrative opportunities in major markets.⁵ After all, as the history of the electric power industry confirms, that is how the private enterprise system operates. It is quite another thing, however, for SBC/Ameritech to ask the Commission to approve their merger on public interest

¹ A recent article describing SBC's influence in Texas, and how it has gone about obtaining and maintaining it, is appended as Attachment A.

² Section 3.251(d) of the Texas Public Utility Regulatory Act of 1995, codified at Texas Pub. Util. Code § 54.202, et. seq.

³ HB 620 (1997), codified in Revised Statutes of Missouri § 392.410(7).

⁴ Ark. Code § 23-17-409 (1998).

⁵ Royce Caldwell, president of operations at SBC Communications, candidly admitted to the *Wall Street Journal* that "[t]here is a large percentage of telephone customers that nobody wants to serve. . . . It is unrealistic to think that every customer is attractive to the marketplace." "After Years of Chaotic Competition, Phone Industry Is Ruled By Four Firms," *Interactive Wall Street Journal* (March 8, 1999, p. B1).

grounds while SBC simultaneously works to prevent rural communities from helping themselves to obtain prompt access to the benefits of the Information Age through their public power utilities. Such actions by SBC are inconsistent with the purposes of the Telecommunications Act and are contrary to the public interest, as they contribute to the growing disparity between rural and urban areas that Congress and the Commission have often condemned.⁶

Public power utilities are prepared to help rural and urban distressed communities overcome the digital divide. In this proceeding, APPA is not seeking a subsidy for the provision of advanced telecommunications services, but elimination of SBC-sponsored state barriers to entry of public power utilities. If, however, arbitration panels find SBC to be in violation of the proposed conditions, APPA suggests that SBC pay liquidated damage penalties to each state public utility commission in the states in which violations have occurred. The amount of the penalties would be commensurate with the damages caused to the states and their residents by the lack of universal availability of advanced telecommunications services. The state PUC(s) would then utilize the funds to help support advanced telecommunications service deployment.

RECOMMENDATIONS

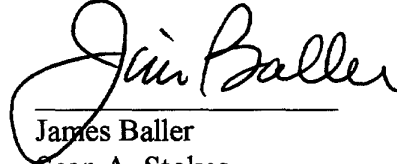
To enhance the public interest, APPA recommends that the Commission require SBC/Ameritech to agree to satisfy the following additional conditions as a prerequisite to the Commission's approval of the merger:

1. Cease and desist from promoting or supporting, before any state or local governmental entity, any measure that may explicitly or effectively prohibit any entity, including any public power utility, from providing directly or indirectly any telecommunications service.

⁶ A recent report by the National Telecommunications and Information Administration found that Americans living in rural areas are 25% less likely to be connected by PCs or the Internet even when holding income constant, *Falling Through the Net: Defining the Digital Divide, A Report on the Telecommunications and Information Technology Gap in America*, July 1999, US Department of Commerce, National Telecommunications Information Administration.

2. For each state in which SBC/Ameritech will do business if the merger is approved, furnish the Governor, the leaders of both parties in each chamber of the state legislature, the chairmen and ranking minority members of the legislative committees with jurisdiction over telecommunications matters, the chair of the public service commission, and the chief elected official of each city, county and town that SBC/Ameritech seeks to serve, a written statement that SBC/Ameritech opposes adoption of any new legislative or regulatory measure, and supports repeal of any existing measure, that may explicitly or effectively prohibit any entity, including any public power utility, from providing any telecommunications service directly or indirectly.
3. If state arbitration panels or the FCC find SBC/Ameritech have violated these conditions, state arbitration panels will order SBC/Ameritech to pay liquidated damage penalties commensurate with the harm caused to their respective states and residents. The respective PUCs shall utilize the penalties to support universal deployment of advanced telecommunications services.

Respectfully submitted,



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July 19, 1999

CERTIFICATE OF SERVICE

I, James Baller, hereby certify that on this 19th day of July 1999, I caused copies of the foregoing letter to be served on the parties on the attached Service List by Hand Delivery where indicated and by first-class U.S. Mail where indicated.

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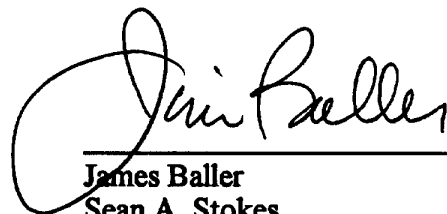
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July 19, 1999

ATTACHMENT A

DALLAS Observer

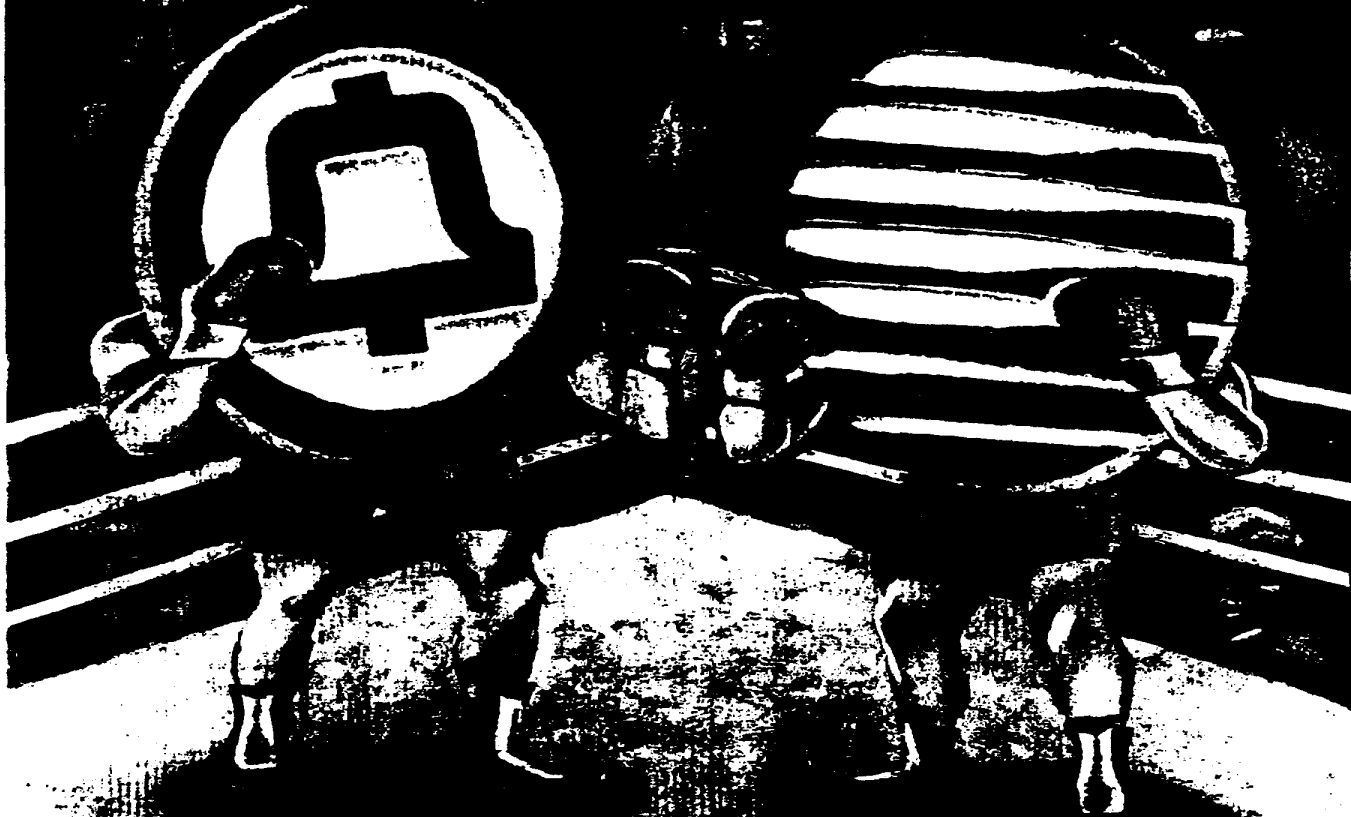
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RING MA BELL



WHEN THE BELL RINGS, IT'S TIME TO A BRAWL
THAT'S YOU—

BY STUART ESKENAZI



On the teen beat:
Today's high school movies
would give John Hughes
a failing grade

Giant steps toward
home: Dallas-born
jazzier Cedar Walton
returns

The pen is mightier
than the lightsaber:
Crain and Wilonsky argue
over *Phantom Menace*



WHEN HEAVYWEIGHT SOUTHWESTERN BELL GETS INTO A BRAWL WITH AT&T AT THE LEGISLATURE, CONSUMERS—THAT'S YOU—ARE THE ONES WHO GET BEAT UP

RING MIA BELL

BY STUART ESKENAZI

It started with a lady in the clouds issuing you a challenge in a 30-second TV commercial.

"As you look at your next phone bill," she said as dark billows moved rapidly across the sky behind her, "try and make sense out of the fact that it's more expensive to call within Texas than it is to call another state."

The lady spoke indignantly as you lay supine on your sofa. "That's right," she said. "It costs more to call from Marfa to Midland than it does from Marfa to Honolulu."

How can that be? you thought.

"Southwestern Bell, GTE, and other local monopolies have no effective competition," she explained, "allowing them to set long-distance access rates that are among the highest in the country."

You didn't know an access rate from a prime rate, but you were galled at Southwestern Bell.

And she was glad.

The lady in the clouds' on-screen debut during the fall of 1996 launched a high-stakes scuffle over telephone service that is working toward its denouement at the Texas Legislature. In a legislative session devoid of any crisis, AT&T helped create one with its barrage of TV ads that spawned an equally aggressive ad campaign by Bell.

Legislators, keenly aware of the storm clouds swirling over access rates, feel pressured to act. Somehow. Some way. "In the absence of the ads, it's questionable whether the Legislature would even be inclined to do anything on these issues," says Rep. Sylvester Turner of Houston.

Yet telecommunications is a subject that even the most learned of legislators has trouble understanding. Seemingly innocuous bill language can cost consumers millions of dollars. In the haste to pass a telecommunications bill before the Legislature shuts down on May

31, legislators are poised to make a decision without really grasping the implications.

As one legislator puts it, the telecommunications freight train has left the station. And just in case legislators forget that there is no turning back, AT&T has the lady back on your TV, still seated in front of a backdrop of storm clouds but sporting a different hairdo and issuing a call to arms. "Demand low phone bills," she says as she slams her fist on her khaki-covered knee.

You are under her spell. You either call the toll-free number or call up the Web site that appears on the screen. From there, a group called Texas Partnership for Competition encourages you to contact your state legislator and, darn it, you're mad, so you do just that.

Congratulations. What you have just done is help fan flames that almost certainly are going to come back to singe your behind and those of other residential phone customers.

The lady, you see, is a tramp for AT&T. And she has drafted you into AT&T's war of greed with Southwestern Bell.

AT&T sees Bell as a future competitor in long distance, local phone, and other telecommunications services. Since February, AT&T has spent about \$5 million on political ads, according to filings with the Texas Ethics Commission. Bell spokesman Glenn Smith says Bell has matched AT&T dollar for dollar on defense ads that slam AT&T. The strategy behind the AT&T ads is to seize profits from Bell by pressuring the Legislature to reduce long-distance access fees.

An access fee is the surcharge Bell imposes on long-distance companies, including AT&T, to tap into Bell lines within the state. The fee, currently 11.63 cents a minute, gets passed down to y customer, every time you place a long-distance call within the state.

Continued on page 32

Ring Ma Bell

Continued from page 31

That's why long-distance companies like AT&T charge you more to call from Marfa to Midland than from Marfa to Honolulu. It's not their fault. It's Southwestern Bell's.

But before you become an AT&T soldier and contemplate how sexy you look in camouflage, understand that as you fight for AT&T, you are actually helping Southwestern Bell. Whenever Bell gives a little at the Legislature, it expects to take a lot in return. The company almost assuredly will walk away from this fight with a trove of new rights, including an ability to raise prices essentially at will on most of its services.

That's because no company is as plugged-in at the Legislature as Southwestern Bell. With more than 100 lobbyists trolling the Capitol halls on its behalf, with a well-earned reputation as a company committed to community philanthropy, and with 25,000 laborers across Texas wearing a union label, Bell enjoys advantages like no other special interest that asks the Legislature for favors.

The more candid of legislators admit they have a hard time saying no to Bell.

"Bell is aggressive, and it's just a matter of an individual legislator being able to accept that aggressiveness," says Rep. Robert Puente, a San Antonio Democrat and one of the few legislators tough enough to stand up to Bell. "If you can accept it and hear their point of view and still stand your ground, well then I think that's what the voters want of you. And if you can't stand up to them, well then I think the voters need to know that too."

What Southwestern Bell wants, and prob-

State Rep. Toby Goodman of Arlington, right, thought he could marshal through the Legislature a telecommunications bill that would be good for consumers and make Southwestern Bell happy at the same time. He found out he was in over his head. Rep. Leticia Van de Putte of San Antonio, below, says AT&T is threatening to assassinate her character during the upcoming election because of her sponsorship of a bill with generous provisions for Southwestern Bell.



bly will get, is freedom to raise rates on nearly all of its services, effectively getting the state's regulator, the Public Utility Commission, out of its business. Taking note of the Legislature's proclivity to lower access rates, Bell is willing to negotiate a reduction even though the company insists the existing rate subsidizes a loss it incurs from keeping the basic rates for local service among the lowest in the nation.

Although the legislation now under consideration in Austin changes almost hourly, Bell appears willing to appease lawmakers by agreeing to freeze that basic residential rate along with the price of its most popular premium service, call waiting, until perhaps 2005. In exchange, the company will be able to set prices for just about everything else without PUC interference.

PUC Commissioner Judy Walsh repeatedly has warned legislators of the dangers of giving Bell too much pricing flexibility too quickly. Although legislators moved to open local phone service to competition with its 1995 telecommunications reform law, Bell remains Texas' local phone monopoly. Bell disagrees, pointing to the 200-plus companies licensed to provide local phone service in Texas. The fact remains, though, that Bell has 97 percent of the customers within the mostly urban markets where it does business.

"A market with a 97 percent market share will not police itself," Walsh told a Senate committee recently.

Walsh, along with smaller phone companies that want to be able to compete in local residential service, figures Bell will engage in predatory pricing. They fear that Bell would

"I THINK IT'S A VERY WRONG PORTRAYAL FOR ANYBODY TO TELL ME, 'LETICIA, YOU'RE THE HO FOR SOUTHWESTERN BELL,' AND YET THAT'S WHAT THE OTHER SIDE WOULD HAVE YOU BELIEVE."

chase away competitors by charging cut rates on services, and that once competitors have left Texas, Bell would raise its prices, which it would be able to do without state regulatory interference. The short-term benefit of low prices is outweighed by the long-term consequence of high prices charged by an unregulated monopoly, they argue.

So would consumers benefit at all from the Bell trade-off?

It's possible, perhaps even probable, that long-distance companies will pass on the access-charge reductions to customers, but legislators can't guarantee that—although they might try to convince you they can. Even if the savings are passed on, not all customers would benefit equally. Business customers could experience a bonanza at the expense of residential customers. And customers who rarely place long-distance calls within the state might see annual savings that amount to



Rep. Sylvester Turner of Houston talks straight about his priorities. He'll be receptive to any company's sales pitch if it does right by his district.

mere pocket change.

Legislators say they want to pass a telecommunications bill that is good for consumers. But in the frenetic pace of a 140-day legislative session, they have gotten caught up in the lobbying. They are casting this fight as Bell vs. AT&T, when, in fact, it is Bell and AT&T vs. you.

Some legislators admit that when they decide their vote on this most complex of legislation, they will consider factors that have nothing at all to do with the merits of the bill. They will consider that Southwestern Bell is based in Texas while AT&T is based in New Jersey. They will consider Bell's sparkling record of community service. They will consider the job security of Bell's 25,000 union workers. They will consider the trust that they have built over the years with Bell lobbyists. And they will pick their side accordingly.

And Bell, driven by profit and an intense desire to retain its monopoly over local phone service in Texas, will make certain that it is rewarded handsomely for its sacrifice of reducing access charges.

"AT&T was hoist with its own petard," says Janee Briesemeister, senior policy analyst with the southwest regional office of Consumers Union, which advocates more competition in local phone service. "They are the architect of their own doom. They have forced the Legislature to do something, but Bell has the clout to do a quick pre-emptive

thus do all the other stuff that AT&T and consumers hate."

The lady's head most assuredly was in the clouds.

Officially, it's called House Bill 1701. Some legislators, for simplicity's sake, call it "Bell's bill." "Around our house," says consumer advocate Sheila Holbrook-White, "we call it the telecommunications wet dream for Southwestern Bell."

If nothing else, the bill is a testament to the confidence and power that Southwestern Bell wields at the Legislature. More than 35 House members fell over themselves to sign on as co-sponsors even though the bill would have lowered access charges a puny 2 cents a minute while giving Bell full control over setting its own prices on a hostload of services, including call forwarding, call return, caller ID, three-way calling, speed dialing, directory assistance, and ISDN lines.

It also would have let Bell launch a new service simply by giving 24 hours' notice to the PUC. Right now, Bell must go through hearings and secure PUC approval before starting a new service. While the bill would have frozen the monthly price for basic residential service at what it has been since 1984—in Dallas, \$10.40—it would have let Bell add surcharges and fees at will.

Continued on page 24

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As president of Southwestern Bell in Texas, David Cole presides over a lobbying juggernaut.

Ring Ma Bell
Continued from page 33

When the bill was filed earlier this year, Southwestern Bell was not listed as its chief author. That's against the rules. Instead, the bill carried the name of Rep. Leticia Van de Putte, a San Antonio Democrat who later this year is expected to launch a campaign for an open state senate seat. One of her opponents is likely to be Puente, her House colleague with a reputation for standing up to Bell.

Van de Putte says that although she filed HB 1701, she would not have supported the original version—the "wet dream" version. "It looks very much like Southwestern Bell and GTE [the company that monopolizes local phone service in rural Texas] would be enhanced by that bill. And I filed it just like that, knowing that during the legislative process, it would change. But you never start from your weakest point. I needed things in that bill that I knew I could give up."

For her troubles, Van de Putte, a 44-year-old pharmacist and mother of six, is being characterized rather crudely.

"I think it's a very wrong portrayal for anybody to tell me, 'Leticia, you're the ho for Southwestern Bell,' and yet that's what the other side would have you believe," Van de Putte says. AT&T is threatening to assassinate her character during the upcoming election, by taking what she says is a "Bell" officials deny making any such threats.

Before this session, Van de Putte was known among legislators as a cheerful colleague since 1991 who had yet to become a major player. As she took on the biggest bill of her political career, she sought the assistance—and perhaps the cover—of Rep. Toby Goodman, an Arlington Republican who sits next to her on the House floor. The cigar-chewing lawyer with the thick, graying mustache is widely regarded around the Capitol as one of the good guys.

He shepherded the rewriting of the state's juvenile justice laws in 1995. He played watchdog over former Attorney General Dan Morales' bumbling child-support enforcement division. His name is mentioned by Capitol insiders as someone who, by all rights, should be the next House speaker except that everyone knows the lobby would never stand for it because of his independent ways.

Together, Goodman and Van de Putte thought they could marshal through the Legislature a telecommunications bill this session that would be good for consumers and make Southwestern Bell happy at the same time. They are finding out that they are in over their heads.

"These are two legislators who are experienced legislators, but not in telecommunications," says Edwin Rutan, AT&T's southwest regional vice president of law and government affairs and general counsel. "This is an incredibly complicated area. I do this 365 days a year.

How, by using what else -
2d. AT&T offi-

Both Van de Putte and Goodman know that if legislators actually read their bill, they wouldn't be able to understand it. Telecommunications

It appears nothing can stop the Legislature from ramming through a telecommunications

The third picture depicted smiling passengers inside a rail car effortlessly gliding along the tracks on a beautiful, sunny day.

They surely noticed that Brimer's art exhibit did not include a sketch of a brakeman.

David Cole, Southwestern Bell's Texas president, has put aside an hour to have lunch with his wife, Sandy, and his two tow-headed toddlers.

Dallas Observer May 20 - 25, 1966 3

Ring Ma Bell

dlers, David and Brett. It's a rare treat for Cole, who directs Bell's government affairs and community relations from an office six blocks from the Capitol. One of the boys pointed to the building recently and said, "That's where Daddy lives."

During the legislative session, that's about right. Cole is the commander of an operation that spends about \$12 million a year to influence the Legislature, according to reports the company files with the Public Utility Commission.

This legislative session, Bell enlisted 95 lobbyists. Another four represent Bell's parent company, SBC Communications Inc., and nine more lobby for the Texas Telephone Association, of which Bell is a key member.

The volume of lobbyists is obscene. But

Cole says in his strong Texas accent that the number is deceiving. Most of those folks don't really lobby legislators, he says, but Bell wants to abide by state ethics laws, so it registers them in case a contact should occur.

It is true that much of a legislator's contact with Bell occurs outside of Austin, in the home district. Of Bell's 95 lobbyists, about 70 are employed by either Bell or SBC. Of those, about 60 are external-affairs managers, who are company emissaries fanned out across the state.

They are Bell's goodwill ambassadors; some serve on school boards, and all are active in chambers of commerce. They take part in community economic development and education projects. They are the faces behind Bell's investment in community involvement. The company spent \$6.4 million from 1995 to 1997 in dues and membership fees, according

to the reports it files with the PUC. In 1995, the dues included \$74,750 to the Greater Dallas Chamber of Commerce, \$72,500 to the Fort Worth Chamber of Commerce, and \$21,300 to the Central Dallas Association.

Bell's external-affairs employees are in the business of making friends with the movers and shakers in their communities, including legislators. Typically, they don't talk to legislators about the nitty-gritty details of legislation, Cole says.

"If there's an opportunity that they can talk directly to their legislator, we give them that opportunity," he says. "These folks are not involved in any strategic thinking as to where we are trying to take our company. But these people play a key role in their communities. I guarantee you, we don't have them out there as a focal point for our legislative agenda."

The contacts may be benign, but they are

obviously intended to help advance Bell's objectives by building friendly relationships with those who control legislation. Raul "Rudy" Martinez, a Bell external-affairs employee and chairman of the Arlington Convention and Visitors Bureau, gave Rep. Toby Goodman a ticket to join him at Sun Devil Stadium in Tempe, Arizona, in 1996 to watch the Dallas Cowboys win Super Bowl XXX. Goodman says he has known Martinez for about eight years and mentions that their children attended the same high school.

"The only thing I got was a ducat in the end zone at Sun Devil Stadium where they oversold, and the guy in the seat next to me weighed 300 pounds," Goodman says. "If anyone thinks giving me a Super Bowl ticket influenced me on this bill, they just don't know me."

Bell external-affairs employees also play social director. Lisa Hughes, an area vice president based in Austin, spent \$2,819 winning, dining, and entertaining legislators, their staffs, and their families during the first three months of this year, according to reports at the ethics commission.

The filings also indicate that Brad Parrott, an external-affairs vice president in San Antonio, routinely treats legislators to rounds of golf, such as when he carted Rep. Joe Driver of Garland around Austin's Barton Creek Country Club in February.

Bell is far from the only company with lobbyists who treat legislators to dinners, drinks, and golf games. But it may be the only company that uses its own employees, usually based in the legislator's hometown, to do it.

"Southwestern Bell is unique in that there is no other corporation or institution with operations that are so pervasive that they literally have a physical presence and employees in virtually every single legislator's district," says Rutan of AT&T.

Bell, which operates in five states and has its headquarters in San Antonio, does its business out of more than 2,800 buildings across the state. It has more than 37,000 employees in Texas, including about 7,000 employees each in Dallas and Houston.

AT&T, with its corporate offices in New Jersey, has 9,000 employees in Texas, many of whom work in a regional service center in Dallas.

About 25,000 Bell employees in Texas are members of the Communications Workers of America (CWA). During hearings on the telecommunications bill, Bell's union workers have packed the back of the committee room, wearing round, white stickers that say, "For Jobs, HB 1701."

Taking money from Bell by reducing long-distance access charges hurts the company and therefore threatens jobs, says Joe Gunn, president of the Texas AFL-CIO, for which CWA is the largest affiliate. Gunn, a former Bell employee and CWA union boss, says the federation takes the general position that what is good for Bell is good for the union. And CWA members, at Bell's behest, aren't shy about reminding some legislators, mostly Democrats, that the union has been good to them in the past by helping in their election campaigns.

"We help the legislators in some districts get their jobs; now we're asking them to help us keep ours," Gunn says boldly.

AT&T has CWA employees too, but only about 4,000 of them.

AT&T also cannot match Bell's totals in campaign contributions. Bell's political action committee donated about \$450,000 to legislators and statewide elected officials in 1998, compared with the \$150,000 given by AT&T's PAC, according to ethics commission filings. Those totals do not include donations given directly by company executives or lobbyists.

Those totals do not include

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The disclosures at the PUC indicate that Bell gave \$31.6 million in charitable and other contributions from 1995 to 1997, most of it funneled through its parent company's foundation. Bell estimates that its charitable contributions are \$14.1 million annually, with \$1.5 million going to Dallas-area charities. Contributions are both big and small.

"We know if we need help, Southwestern Bell will be there to assist in some projects that we may have," says Puente, the San Antonio legislator. "For example, I had a high school mariachi group in my district that didn't have any uniforms, and I mentioned it to Bell. Sure enough, they sponsored their uniforms."

In gearing up for the legislative session, Bell sent correspondence to lawmakers reminding them of the company's financial investment and philanthropy in Texas, going as far as to break out the numbers by legislative district. In a January newsletter that Bell called its "Report to Legislators," the company heaped praise on itself for a \$461 million investment, even though almost all of it was required under the 1995 telecommunications reform law.

Bell spent \$308 million to upgrade its own facilities and another \$153 million to build new telecommunications infrastructure (such as the internal wiring and other equipment needed for high-speed Internet access) for schools, libraries, and nonprofit health-care centers. But Bell didn't make much noise about the fact that the company was obligated to do these things by the Legislature itself.

Legislators required the investment in schools, libraries, and nonprofit hospitals as a counterbalance to the perks it gave Bell in the 1995 reforms, which included the ability to

ring up extra profits without being subject to a regulated rate cut. Bell is making the most of it, using the required contributions to further endear itself to legislators.

In separate correspondence, Bell gave legis-

BOTH VAN DE PUTTE AND GOODMAN KNOW THAT IF LEGISLATORS ACTUALLY READ THEIR BILL, THEY WOULDN'T BE ABLE TO UNDERSTAND IT.

lators a regional breakdown listing the communities in which the company had upgraded its facilities as well as the schools, libraries, and hospitals that had received new facilities and service discounts. Cole makes no apologies for that.

"It's a direct contribution for the benefit of our children here in the state of Texas," he says.

Bell's crowing pierces the ears of AT&T's Rutan, who continues his blood feud with Bell even though the companies agreed to a deal in the Senate and could shake hands in the House before they're through. "I don't

think it's an improper factor for a legislator to consider the commitment that a particular company has to the state," he says. "What concerns me is a situation where that winds up being the sole determining factor, where Southwestern Bell's ability to be generous in the state of Texas is in large part created by things like profits from the excessive access charge."

Rutan argues that Bell clears \$800 million in profits because of an inflated access rate. He also notes that in November, a PUC study determined Bell was ringing up \$288 million a year in profits that, prior to 1995 deregulation, the PUC would have ordered the company to return to consumers. He multiplies that number by four, one for each year since the 1995 reforms were passed.

"Well," he says, "that's \$1.2 billion, and they gave back \$400-some million. Maybe they should have been a little more generous."

When Rep. Sylvester Turner decides whether to support telecommunications legislation, he considers several factors. The merits of the bill is only one of them.

"Southwestern Bell has taken an aggressive position on wanting to be a community partner, and I put value on that," says the Houston Democrat, whose district is about 50 percent black.

A Harvard Law School graduate serving his 11th year in the House, Turner is one of the Legislature's most effective champions for Texas' disadvantaged. He also is vice chairman of the House State Affairs Committee and the only African-American on the 15-member panel, which has the power to advance or spike telecommunications legislation. After some changes were made to the

original bill, Turner came on board as a cosponsor of HB 1701—a triumph for Southwestern Bell. Turner says he believes the bill provides benefits for consumers by lowering access rates and capping the basic residential phone rate.

He also believes Bell is providing benefits to his district and blacks throughout Texas, a factor that he freely admits has teetered him toward supporting the bill that Bell wants.

"Community partnering is not restricted to Southwestern Bell," he says. "If AT&T wanted to do the same thing and show a greater attachment to the district that I serve and to this state, I am more than willing to evaluate them accordingly and respond to them accordingly. But don't come to the table and ask me to serve you when you are not willing to reach out and become a participant in my district and the state of Texas."

Rutan says AT&T is at a disadvantage by virtue of the fact that it is one-fourth of Bell's size in Texas. "We make major contributions to charitable causes all across the country, but we are present in 50 states."

But in AT&T, Turner sees only a company investing tens of billions of dollars to acquire cable and other phone companies. He sees a company spending millions of dollars on TV ads to influence legislators. "All I see is a company headquartered in New Jersey," he says.

In Southwestern Bell, Turner says he sees a company committed to hiring, promoting, and contracting with African-Americans within his district and across the state. AT&T can talk about a commitment, but Turner sees it in Bell every time a company manager who is black and from Houston pays him a visit to lobby.

Continued on page 39

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predatory pricing and therefore have had the difficult task of having to make the conceptual argument to legislators that rate regulation is necessary to keep consumer prices high, at least until the market is truly competitive. They, too, were part of the coalition with AT&T and consumers. And they, like the consumer representatives, opposed the Senate compromise.

"I'm not sure consumers are a whole lot better off with two competitors than they are with a monopoly," says Charlie Land, executive director of TEXALTEL, an association that represents some of the small and mid-size phone companies.

Wilmot came to the coalition as executive director after spending three years as a regional counsel for the Mexican American Legal Defense and Educational Fund (MALDEF) in San Antonio. Before that, he was Gov. Ann Richards' appointee as the state's advocate for utility consumers.

Now, he is faced with reconciling consumer interests with those of AT&T and having to make excuses when those interests collide—like when AT&T agreed to the Senate bill against the wishes of its consumer partners. Wilmot says the partnership's multimillion-dollar ad campaign, funded almost exclusively by AT&T, succeeded in that it exposed Bell's inflated access charges. But when asked whether it failed by helping ensure that Bell walks away from the 1999 legislative session with dangerous deregulation advantages, he is less assured.

As Wilmot sees it, consumers owe gratitude to AT&T for at least having the guts to take on Bell over access charges. Bell undoubtedly would have gone to the Legislature this year asking for pricing flexibility and for the PUC to be cut out of the process. At least now, Wilmot says, access reductions are part of the deal.

The real question for consumers is whether the harm caused by deregulated pricing is made up for by the benefit of the Legislature's mandating lower access rates. Consumer advocates, by virtue of their opposition to the Senate compromise bill, are saying it is not.

The first issue is whether the access reductions will be passed on to consumers equitably or even at all. AT&T officials have pledged to the PUC that it will flow through access-charge reductions to consumers, but some legislators are not convinced the PUC will be able to determine whether that's even happening. Bell lobbyists are fond of asking, Why is AT&T pushing so hard for access reductions if all that money is going back to consumers?

Altruism certainly is not AT&T's motive, but the company likes the idea of taking profits away from Bell, which stands to lose about \$100 million annually per penny of access reduction. The Senate compromise phases in a reduction, starting at 1 cent and graduating to 3.5 cents, which means Bell stands to lose as much as \$350 million a year.

Wilmot says he is convinced AT&T will pass on the savings to consumers. Of course, he also considers AT&T a partner, albeit one with the upper hand.

"A number of times we have gone cross-eyed with AT&T and had yelling matches," he says. "And if one of us doesn't like it, there's the door. Of course, it wouldn't be the door for them. It would be the door for me."

That scenario doesn't make it sound as if consumers and AT&T make very good partners, no matter what the lady in the clouds says.

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THE WALL STREET JOURNAL.

Article 6 of 21

In Phones, the New Number is Four

By Stephanie N. Mehta

03/08/1999

The Wall Street Journal

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Once there was just one giant phone company. Then the Justice Department broke up the most far-reaching monopoly in U.S. history: American Telephone & Telegraph Co. That set the stage for years of **chaotic competition** between dozens of little and large players.

But now, after a series of megadeals, the phone industry is coalescing into a quartet of supercarriers -- AT&T Corp., MCI WorldCom Inc., SBC Communications Inc., and Bell Atlantic Corp. The pendulum swung from monopoly to fragmentation and is now settling in between, at oligopoly.

In numerous other industries, from airlines to tobacco, oligopoly is a time-honored business arrangement. But with phones, the arrangement raises special concerns, particularly as the industry pushes into areas that aren't regulated.

Wireless carriers, for example, aren't obliged to serve everyone who wants a cellular phone, so people with poor credit can be denied service. Similarly, the burgeoning megacarriers won't be required to serve everyone as they branch into new markets and services. As the industry titans battle for the choicest customers, some people -- and some communities -- may find themselves left on the sidelines.

None other than AT&T is leading the way in industry consolidation. The long-distance provider expects to soon close its \$44 billion deal to buy one of the country's largest cable players, Tele-Communications Inc. AT&T intends to use the cable operator to bypass the Baby Bells and deliver local-telephone service, high-speed Internet access and entertainment to millions of residential customers.

AT&T has also formed an alliance with Time Warner Inc.'s cable unit, a move that should allow AT&T to offer local phone service to about 40% of the country.

AT&T is also moving fast in the hot field of cellular telephones. After buying enough cell-phone companies and licenses to give it nationwide reach, AT&T launched a hugely popular flat-rate, nationwide calling plan that has sharply reduced the cost of wireless calls. Rivals are now scrambling to offer their

own versions.

Two of the former Baby Bells have also emerged as giants. SBC, based in San Antonio, has been involved in a whirlwind of pricey acquisitions, including its purchase of sister Bell Pacific Telesis Group in 1997. It is currently waiting for regulators to give a green light to buy Ameritech Corp. for \$75 billion, a move that extends its reach into the Midwest. SBC has promised it will offer services to businesses and ultimately consumers in 30 new markets outside SBC's and Ameritech's local-service territories if regulators approve the deal.

SBC's growth has been matched by Bell Atlantic, which has already swallowed Nynex Corp., another Baby Bell. Earlier this year, Bell Atlantic, based in New York, made a daring play in the cellular field by trying to scoop up AirTouch Communications Inc., only to be outgunned by London-based Vodafone Group PLC. Bell Atlantic's \$65 billion merger with GTE Corp., which needs government approval, is pending.

Meanwhile, MCI WorldCom has completed more than 50 acquisitions in recent years. Its strategy is to build a huge international network and concentrate on serving big multinational business customers, where the profit margins are high. Sprint Corp. and local carriers BellSouth Corp. and U.S. West Inc. have stayed out of the merger fray, arguing that they can serve their customers without major acquisitions. But analysts say that the companies will need to get bigger to compete on a national scale.

Reed Hundt, former chairman of the Federal Communications Commission and a senior adviser with consultants McKinsey & Co., says consumers will be better off with the new oligopoly. "There will be multiple national carriers, a handful of local regional operators and great variety and tremendous creativity in marketing," he predicts.

But rural home owners, low-spending phone users, and small businesses may not enjoy the choice and lower prices that this **competition** will bring to corporations and big-spending consumers. "There is a large percentage of telephone customers that nobody wants to serve," acknowledges Royce S. Caldwell, president of operations at SBC. "It is unrealistic to think that every customer is attractive to the marketplace."

Fred Peralta, mayor of Taos, N.M., would love to see **competition** for the town's 5,000 residential customers with local carrier U S West Inc. But he worries that companies can't justify spending millions to build new phone networks in rural towns with the hope of winning a handful of customers. "It's just not going to happen," says Mr. Peralta.

Indeed, Taos isn't on SBC's list of 30 new markets it plans to serve initially if its Ameritech purchase wins approval. And TCI doesn't serve Taos, making it an unlikely candidate for AT&T to serve immediately.

Even some urban areas may have to wait to see new choices and new services. Dallas appears to have the potential to be a hotbed of **competition** : It is served by SBC's Southwestern Bell unit and TCI. And since GTE provides local service in the Dallas suburbs and to a small number of consumers in Dallas itself, it too is a potential rival.

But the lack of **competition** in Dallas so far underscores the difficulty of delivering competing local-telephone services in a business with a unique combination of heavy capital equipment and a crazy-quilt of regulators. TCI, for example, first must upgrade its cable to add more capacity and two-way capability -- a project that won't be completed until the end of next year, AT&T has said. "This vision cannot happen overnight," C. Michael Armstrong, AT&T's chairman, said in recent testimony before the FCC.

Local phone service, as long as it depends on a wire running into a customer's home, is a natural monopoly. It is also a vital service. The local phone market thus continues to be heavily regulated. Residential telephone rates are held artificially low by state and federal regulators -- and federal subsidies help compensate the Bells and GTE for serving rural areas.

In Patoka, Ind., for example, GTE charges customers \$6.20 a month for basic service. Yet the company says it costs \$103.22 to serve residential customers there. That makes it impossible for firms not receiving subsidies to compete in the area. "Companies will go where they can make money," notes William Barr, GTE's general counsel.

Phones The Big Four

U.S. residential customers, in millions*

AT&T/TCI	80
Bell Atlantic/GTE	41
SBC/Ameritech	30
MCI worldCom	20

*Includes customers from large pending acquisitions; some customers may

Source: Companies

(See related article: "Big Business: Let's Play Oligopoly! --- Why Giants Like Having Other Giants Around" -- WSJ March 8, 1999)

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